

United States Court of Appeals
For the First Circuit

No. 99-1969

MARIANNE T. TRUNDY,
Plaintiff, Appellant,

v.

FISHER COLLEGE,
Defendant, Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

[Hon. William G. Young, U.S. District Judge]

Before

Selya and Lynch, Circuit Judge,
and Schwarzer,* Senior District Judge.

Christopher C. Trundy, with whom Law Offices of Christopher C. Trundy was on brief, for appellant.

Scott Douglas Burke, with whom John More Nataro and Morrison, Mahoney & Miller, LLP were on brief, for appellee.

JULY 3, 2000

* Of the Northern District of California, sitting by designation.

SCHWARZER, Senior District Judge. Marianne Trundy brought this employment discrimination action against Fisher College. The gravamen of her complaint was that she was terminated in retaliation for filing a charge of discrimination with the Massachusetts Commission Against Discrimination (MCAD). Her case went to trial and the jury returned a defense verdict. She sought a new trial because defendant had failed to produce a critical document until the eve of trial, in violation of the court's order. The district court denied the motion and plaintiff appealed. We have jurisdiction under 28 U.S.C. § 1291 and affirm.

Because the parties are familiar with the facts and proceedings, we need not state them here at length. Ms. Trundy filed her action alleging employment discrimination in the district court on April 10, 1996. After a delay occasioned by a stay requested by the parties and an unsuccessful attempt at mediation, the district court entered a scheduling order directing, among other things, completion of automatic document disclosure as required by Local Rule 26.2(A) by September 19, 1997. A status conference was held on February 12, 1999, at which the court ordered completion of discovery by March 12, 1999, and set a trial date of April 12, 1999. At a further conference on March 5, 1999, the discovery cut-off was extended to March 30, 1999.

On March 18 and 19, 1999, counsel for Fisher produced some seventeen documents relevant to issues in the case. Included among them was a document entitled Compensation Authorization Form. This form contained comments evaluating her work and suggested a \$10 per week pay increase for Ms. Trundy effective September 1994. Written across the face of the document is the word "Replace." This document, which the parties refer to as the "Replace" document and which plaintiff describes as the single most important document in the case, was relevant to the issue of whether Fisher had decided to terminate Ms. Trundy before she filed her charge with MCAD.

At the time counsel for Ms. Trundy received the Replace and other documents, discovery was still in progress. Both sides were taking depositions; indeed, depositions continued past the March 30 deadline. In particular, Ms. Trundy received the document before taking the depositions of Dean Vieira, who had made the decision to terminate her, and Dennis Paquette, her immediate supervisor, who had written Replace on it. Her counsel noticed no additional depositions and served no interrogatories or other requests. Instead, he filed a motion for an order extending discovery for ninety days on the ground that Fisher had failed to comply with its discovery obligations. That motion was ultimately denied. However, at the final pretrial conference on March 30, counsel for Fisher offered to respond to a further interrogatory but none was filed.

Ms. Trundy seeks a new trial on the ground that the late disclosure of crucial documents, in violation of the court's rules and orders, deprived her of an opportunity to investigate, evaluate and challenge the new evidence and prejudiced her ability to present her case at trial. The district court's refusal to grant an opportunity to conduct additional discovery, she contends, was therefore an abuse of discretion. We review the district court's ruling on a discovery request for abuse of discretion. See Fennell v. First Step Designs, Ltd., 83 F.3d 526, 530 (1st Cir. 1996); see also Fashion House, Inc. v. K Mart Corp., 892 F.2d 1076, 1081 (1st Cir. 1989) (district court's choice of discovery sanctions reviewed for abuse of discretion).

We agree with the district court's assessment that Fisher failed to comply with its disclosure obligations under Local Rule 26.2(A) in a timely fashion. We fail to discern, however, how this resulted in prejudice to Ms. Trundy's case. Counsel received the documents while discovery was ongoing. He had an opportunity to question the persons involved in the decision to terminate with the documents in hand. Had he wished to conduct particular additional discovery, he still had time before the March 30 deadline to notice depositions, file a Rule 34 motion or submit interrogatories. He did none of these. His motion for a ninety-day extension offered only broad generalities respecting his need for the extension and for what he intended to use it.

We also note that the claim of prejudice rings hollow, given the fact that counsel made no objection to the use of the Replace document at trial and that the district judge instructed the jury that they could draw an adverse inference from the late production of the Replace document.

We conclude that the district court did not abuse its discretion in denying the motion for a new trial. "A district court should order a new trial only when convinced that the clear weight of the evidence so requires, or that a miscarriage of justice would otherwise result." Consolo v. George, 58 F.3d 791, 793 (1st Cir. 1995) (quoting Veranda Beach Club Ltd. v. Western Sur. Co., 936 F.2d 1364, 1384 (1st Cir. 1991)). Ms. Trundy's appeal fails to meet the test.

For the foregoing reasons, the judgment is affirmed.

Affirmed.